



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 625 OF 2014

JOHN KIDIGA KEYA

CLAIMANT

v

ELDORET MATTRESS LIMITED

1ST RESPONDENT

DANIEL NGUGI t/a KAMTINGA

SERVICES LTD

2ND RESPONDENT

RULING

1. This Cause was dismissed on 21 July 2016 because the Claimant and Respondents were not in Court when it was called out for hearing.
2. The hearing date had been fixed on 9 December 2015 in the presence of Mr. Morara holding brief for Mr. Chepkwony for the Claimant and in the absence of the Respondents.
3. When scheduling the hearing date, the Court had directed the Claimant to serve a hearing notice upon the Respondents, and also to pay Court adjournment fees before the hearing date.
4. The grounds/reasons advanced by the Claimant's advocate for failure to attend Court on 21 July 2016 is that there was misdiarisation by the advocate who held brief, and therefore even the Respondent was served with a hearing notice for 27 July 2016 instead of 21 July 2016.
5. The Claimant contended that it would be prejudicial if the Cause was not reinstated on account of a mistake by an advocate holding brief and that the interest of justice tilted in favour of setting aside the order of dismissal.
6. When the Cause was called out for hearing on 21 July 2016, there was no affidavit of service on record that a hearing notice had been served upon the Respondents.
7. The purported affidavit of service annexed to the application seeking reinstatement indicates that it was filed in Court on 27 July 2016.
8. The Court has looked at the record and considered the material placed before it and notes as follows.
9. One, the original of the said affidavit is not on file nor is there an official receipt on file to show that the affidavit was indeed filed, paid and receipted for.

10. Secondly, there is no mention in the said affidavit whether the 1st Respondent was served with a hearing notice. The affidavit only deposes as to service upon the 2nd Respondent.

11. Thirdly, the Claimant was directed on 9 December 2015 to pay court adjournment fees before the hearing date. The said fees were not paid

12. Fourthly, the Claimant was present in Court when the hearing date was fixed.

13. He has not sworn any affidavit as to what he understood happened in Court on 9 December 2015, or whether he was also mistaken as to the payment of court adjournment fees.

14. The Court finds no merit in the Claimant's application to set aside the order dismissing the Cause, and therefore declines to exercise its discretion in favour of the Claimant.

15. The upshot being that the said application dated 5 September 2016 is dismissed with no order as to costs.

16. Despite the dismissal, the Claimant is still under an obligation to pay the adjournment fees as was ordered.

Delivered, dated and signed in Nakuru on this 30th day of September 2016.

Radido Stephen

Judge

Appearances

For Claimant

Ms. Morande instructed by Chepkwony & Co. Advocates

Court Assistant

Nixon